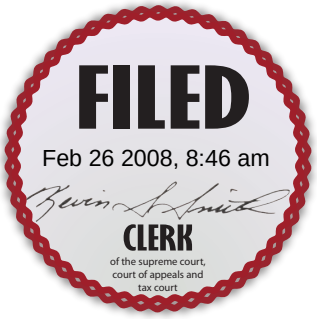

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IN THE
COURT OF APPEALS OF INDIANA

WALTER DUGGINS,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 49A02-0707-CR-595
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Charles Wiles, Senior Judge
Cause No. 49G16-0605-FD-83893

February 26, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

BAILEY, Judge

Case Summary

Appellant-Defendant Walter Duggins ("Duggins") appeals his conviction and sentence for Residential Entry, a Class D felony.[1] We affirm.

Issues

Duggins presents two issues for review:

I. Whether there is sufficient evidence to support his conviction for Residential Entry; and

II. Whether his three-year sentence, with one and one-half years suspended, is inappropriate.

Facts and Procedural History

During the late evening of April 17, 2006, Duggins opened the patio door leading into the apartment of his ex-girlfriend Mary Suddarth ("Suddarth"). Duggins entered Suddarth's bedroom and awakened her by talking to her. Suddarth's daughter chased Duggins out of the apartment and Suddarth's niece called 9-1-1.

On May 12, 2006, the State charged Duggins with Residential Entry, Criminal Trespass,[2] and Invasion of Privacy.[3] On May 30, 2007, a bench trial was conducted and Duggins was found guilty of Residential Entry.[4] On June 13, 2007, Duggins was sentenced to three years imprisonment, with one and one-half years suspended.[5] This appeal ensued.

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[1] Ind. Code § 35-43-2-1.5.
[2] Ind. Code § 35-43-2-2.
[3] Ind. Code § 35-46-1-15.1.
[4] The trial court found that Duggins had committed Criminal Trespass, but that the offense was included in Residential Entry. Duggins was acquitted of Invasion of Privacy.

[5] Duggins was subsequently convicted of two other offenses. The trial court conducted a joint sentencing hearing for those convictions and the instant conviction. Duggins appeals only his conviction and sentence for Residential Entry.

Discussion and Decision

I. Sufficiency of the Evidence

In order to convict Duggins of Residential Entry, as charged, the State was required to show that he knowingly broke and entered Suddarth's dwelling. Ind. Code § 35-43-2-1.5. To establish that a breaking has occurred, the State need only introduce evidence from which the trier of fact could reasonably infer that the slightest force was used to gain unauthorized entry. Young v. State, 846 N.E.2d 1060, 1063 (Ind. Ct. App. 2006).

In a trial before the bench, the court is responsible for weighing the evidence and judging the credibility of witnesses as the trier of fact, and we do not interfere with this function on appeal. O'Neal v. State, 716 N.E.2d 82, 87 (Ind. Ct. App. 1999), trans. denied. In reviewing a claim of insufficient evidence, we look only to the evidence most favorable to the judgment and all reasonable inferences that support the judgment. Hubbard v. State, 719 N.E.2d 1219, 1220 (Ind. 1999.) We must affirm a conviction if the factfinder heard evidence of probative value from which it could have inferred the defendant's guilt beyond a reasonable doubt. Graham v. State, 713 N.E.2d 309, 311 (Ind. Ct. App. 1999), trans. denied.

Suddarth and her daughter Amber Tomlinson ("Tomlinson") testified that they locked their front door, patio door, and windows. Before they went to bed on the evening in question, they "checked every door." (Tr. 17.) Suddarth and Tomlinson later observed Duggins inside the apartment, although he had not been invited. Tomlinson saw that the patio door "was wide open" so she "shut it real fast." (Tr. 18.) The State presented sufficient evidence to permit the factfinder to infer beyond a reasonable doubt that Duggins broke into

and entered Suddarth's dwelling.

II. Sentence

Duggins requests that we conduct our independent review of the nature of the offense and character of the offender pursuant to Indiana Appellate Rule 7(B) and revise his sentence.[6] In particular, he emphasizes his stable employment and need to support his child.

Indiana Appellate Rule 7(B) provides that we "may revise a sentence authorized by statute if, after due consideration of the trial court's decision, [we find] that the sentence is inappropriate in light of the nature of the offense and the character of the offender." Nevertheless, our review under Appellate Rule 7(B) is deferential to the trial court, and "a defendant must persuade the appellate court that his or her sentence has met th[e] inappropriateness standard of review." Childress v. State, 848 N.E.2d 1073, 1080 (Ind. 2006).

The nature of the offense is that Duggins broke into Suddarth's apartment in the middle of the night, when she, her children, and her niece were sleeping. It was not the first time that Duggins had been accused of criminal conduct involving Suddarth. He had faced several prior charges, which were ultimately dismissed. Duggins has not demonstrated that the nature of the offense of which he was convicted militates toward an advisory or mitigated sentence.

The character of the offender is such that prior attempts at rehabilitation failed. He has six prior convictions in South Carolina, including offenses of Housebreaking, Burglary,

and Attempted Burglary. Duggins has also been arrested numerous times in the State of Indiana, frequently for incidents involving Suddarth. After the instant crime was committed, Duggins was again arrested for two offenses against Suddarth.

In Morgan v. State, 829 N.E.2d 12, 15 (Ind. 2005), our Indiana Supreme Court recognized that sentence enhancement may be appropriate based upon a criminal history, with weight "measured by the number of prior convictions and their seriousness, by their proximity or distance from the present offense, and by any similarity or dissimilarity to the present offense that might reflect on a defendant's culpability."

In light of the nature of the offense and the character of the offender, we do not find Duggins' three-year sentence, with one and one-half years suspended, to be inappropriate.

Affirmed.

NAJAM, J., and CRONE, J., concur.

[6] Ind. Code § 35-50-2-7 provides that "a person who commits a Class D felony shall be imprisoned for a fixed term of between six (6) months and three (3) years, with the advisory sentence being one and one-half (1 ½) years."